subject an owner's land to liens, none of which were superior to his wife's dower right, a decree for the sale of the land was made. The wife joined the commissioner in executing a deed to the purchaser, reciting that the wife relinquished to the purchaser her rights in the premises. The deed was acknowledged and admitted to record. The wife was not guilty of any fraud whereby the purchaser was misled. The evidence did not show that she induced the purchaser to purchase the premises. *Held*, that the wife was not barred from claiming her dower right by her deed under the statute, inasmuch as her husband did not join therein, or by estoppel.

VIRGINIA & N. C. WHEEL CO. v. HARRIS.

March 9, 1905.

[49 S. E. 991.]

MASTER AND SERVANT—DEFECTIVE MACHINERY—PROMISE TO REPAIR—CONTINUING SERVICE—PLEADING—DEMURRER—INSTRUCTIONS.

1. A demurrer to an entire declaration, if one count is good, must be overruled.

[ED. NOTE.—For cases in point, see vol. 39, Cent. Dig. Pleading, secs. 486, 487.]

2. Where a demurrer is to an entire declaration, the assignment of causes of demurrer applicable to both counts does not enlarge the scope of the demurrer.

3. A declaration, in an action for injuries, charging that it was defendant's duty to use ordinary care to furnish plaintiff with a reasonably safe saw, that defendant was informed of its defective condition and promised to fix it, but directed plaintiff to continue his work, and failed to fix it as promised, by reason of which plaintiff was injured, is sufficient as against a demurrer assigning as grounds that it is indefinite and does not set out the alleged cause of action with sufficient particularity.

4. Where the servant is induced to continue to operate defective machinery by the master's order, coupled with a promise to repair the defect, the question whether a continuance in the service and use of the defective machinery is such negligence as to bar a recovery is for the jury.

5. An averment that a master promised to repair machinery, but failed and "refused" to do so, is not inconsistent with the theory that the promise induced the servant to incur a known danger.

6. Where defendant in an action for injuries by a saw introduced testimony that it was the track which caused the trouble, that it was fixed before the accident, and that another employé worked at the saw for six weeks after the accident, evidence showing the condition of the saw a week after the accident, and subsequent repairs, was admissible in rebuttal.

7. An instruction that if defendant promised to repair a saw, and failed to do so in a reasonable time, plaintiff would not be entitled to recover for that cause alone, but if afterwards plaintiff "failed to exercise the increased degree of care,

in using the saw, demanded by the increased peril, the jury must find for defendant," is properly modified by substituting, for the clause quoted, "failed to exercise such reasonable care as a prudent man would exercise under the same circumstances."

8. A requested instruction not warranted by the evidence is properly refused.

9. An instruction that if plaintiff complained of the defective condition of machinery, and defendant promised to repair, but failed to do so in a reasonable time, in consequence of which plaintiff was injured, the jury should find for plaintiff, unless he failed to exercise reasonable care, considering his experience, or unless the danger was so palpable that no one but a reckless person would expose himself to it, is not improper on the ground that it does not make the presence of danger a necessary element to a recovery, and does not state that plaintiff relied on the promise to repair.

10. In an action for injuries by a saw, an instruction that if defendant refused to repair the saw, or by its conduct gave plaintiff to understand that it did not intend to repair, plaintiff assumed the risk, is properly refused, as the presumption is that when a servant complains of defective machinery, which the master refuses to repair and directs him to proceed, unless the defect is so palpable that only a reckless man would use it, the servant may presume that the master considers it reasonably safe.

11. An instruction that if plaintiff knew the machinery was out of order, and reported it to the foreman, and it was repaired in plaintiff's presence, and he made no further complaint, to find for defendant, is properly refused, as ignoring the principle that the master's duty to use ordinary care to furnish reasonably safe machinery is personal and non-assignable.

VIRGINIA PASSENGER & POWER CO. ET AL. v. COMMONWEALTH.

March 9, 1905.

[49 S. E. 995.]

STREET RAILROADS—FRANCHISE—TRANSFERS—INTERSECTING LINES—LINE PARTIALLY OWNED BY DIFFERENT COMPANY.

1. Where the ordinance granting a franchise to a street railroad company imposed certain conditions as to rates of fare and giving of transfers, and the company operated its lines in accordance with these regulations, it thereby assumed contractual obligations with respect to such regulations.

2. The ordinance granting a franhcise to a street railroad company provided that it should sell half fare tickets between certain hours, and give transfers at points where one line intersected with another. The company owned a line which extended from its point of intersection with another line to the city limits, beyond which it was owned by a different corporation, which, however, ran its cars with the same operatives into the city and to the point of intersection. *Held*, That this line was an intersecting line, to which the provisions as to half fare tickets and transfers applied.